



Sen. Adriane Johnson

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10200SB3073sam001

LRB102 23422 CPF 35804 a

1 AMENDMENT TO SENATE BILL 3073

2 AMENDMENT NO. _____. Amend Senate Bill 3073 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by
5 changing Section 22.59 and by adding Section 22.59a as
6 follows:

7 (415 ILCS 5/22.59)

8 Sec. 22.59. CCR surface impoundments.

9 (a) The General Assembly finds that:

10 (1) the State of Illinois has a long-standing policy
11 to restore, protect, and enhance the environment,
12 including the purity of the air, land, and waters,
13 including groundwaters, of this State;

14 (2) a clean environment is essential to the growth and
15 well-being of this State;

16 (3) CCR generated by the electric generating industry

1 has caused groundwater contamination and other forms of
2 pollution at active and inactive plants throughout this
3 State;

4 (4) environmental laws should be supplemented to
5 ensure consistent, responsible regulation of all existing
6 CCR surface impoundments; ~~and~~

7 (5) meaningful participation of State residents,
8 especially vulnerable populations who may be affected by
9 regulatory actions, is critical to ensure that
10 environmental justice considerations are incorporated in
11 the development of, decision-making related to, and
12 implementation of environmental laws and rulemaking that
13 protects and improves the well-being of communities in
14 this State that bear disproportionate burdens imposed by
15 environmental pollution; and -

16 (6) the State has a particular interest in preserving
17 the quality of Lake Michigan, which serves as a drinking
18 water source for millions of State residents and provides
19 irreplaceable recreational, ecological, and economic value
20 to Illinois.

21 Therefore, the purpose of this Section is to promote a
22 healthful environment, including clean water, air, and land,
23 meaningful public involvement, and the responsible disposal
24 and storage of coal combustion residuals, so as to protect
25 public health and to prevent pollution of the environment of
26 this State.

1 The provisions of this Section shall be liberally
2 construed to carry out the purposes of this Section.

3 (b) No person shall:

4 (1) cause or allow the discharge of any contaminants
5 from a CCR surface impoundment into the environment so as
6 to cause, directly or indirectly, a violation of this
7 Section or any regulations or standards adopted by the
8 Board under this Section, either alone or in combination
9 with contaminants from other sources;

10 (2) construct, install, modify, operate, or close any
11 CCR surface impoundment without a permit granted by the
12 Agency, or so as to violate any conditions imposed by such
13 permit, any provision of this Section or any regulations
14 or standards adopted by the Board under this Section;

15 (3) cause or allow, directly or indirectly, the
16 discharge, deposit, injection, dumping, spilling, leaking,
17 or placing of any CCR upon the land in a place and manner
18 so as to cause or tend to cause a violation of this Section
19 or any regulations or standards adopted by the Board under
20 this Section; or

21 (4) construct, install, modify, or close a CCR surface
22 impoundment in accordance with a permit issued under this
23 Act without certifying to the Agency that all contractors,
24 subcontractors, and installers utilized to construct,
25 install, modify, or close a CCR surface impoundment are
26 participants in:

1 (A) a training program that is approved by and
2 registered with the United States Department of
3 Labor's Employment and Training Administration and
4 that includes instruction in erosion control and
5 environmental remediation; and

6 (B) a training program that is approved by and
7 registered with the United States Department of
8 Labor's Employment and Training Administration and
9 that includes instruction in the operation of heavy
10 equipment and excavation.

11 Nothing in this paragraph (4) shall be construed to
12 require providers of construction-related professional
13 services to participate in a training program approved by
14 and registered with the United States Department of
15 Labor's Employment and Training Administration.

16 In this paragraph (4), "construction-related
17 professional services" includes, but is not limited to,
18 those services within the scope of: (i) the practice of
19 architecture as regulated under the Illinois Architecture
20 Practice Act of 1989; (ii) professional engineering as
21 defined in Section 4 of the Professional Engineering
22 Practice Act of 1989; (iii) the practice of a structural
23 engineer as defined in Section 4 of the Structural
24 Engineering Practice Act of 1989; or (iv) land surveying
25 under the Illinois Professional Land Surveyor Act of 1989.

26 (c) (Blank).

1 (d) Before commencing closure of a CCR surface
2 impoundment, in accordance with Board rules, the owner of a
3 CCR surface impoundment must submit to the Agency for approval
4 a closure alternatives analysis that analyzes all closure
5 methods being considered and that otherwise satisfies all
6 closure requirements adopted by the Board under this Act.
7 Complete removal of CCR, as specified by the Board's rules,
8 from the CCR surface impoundment must be considered and
9 analyzed. Section 3.405 does not apply to the Board's rules
10 specifying complete removal of CCR. The selected closure
11 method must ensure compliance with regulations adopted by the
12 Board pursuant to this Section.

13 (e) Owners or operators of CCR surface impoundments who
14 have submitted a closure plan to the Agency before May 1, 2019,
15 and who have completed closure prior to 24 months after July
16 30, 2019 (the effective date of Public Act 101-171) shall not
17 be required to obtain a construction permit for the surface
18 impoundment closure under this Section.

19 (f) Except for the State, its agencies and institutions, a
20 unit of local government, or not-for-profit electric
21 cooperative as defined in Section 3.4 of the Electric Supplier
22 Act, any person who owns or operates a CCR surface impoundment
23 in this State shall post with the Agency a performance bond or
24 other security for the purpose of: (i) ensuring closure of the
25 CCR surface impoundment and post-closure care in accordance
26 with this Act and its rules; and (ii) ensuring remediation of

1 releases from the CCR surface impoundment. The only acceptable
2 forms of financial assurance are: a trust fund, a surety bond
3 guaranteeing payment, a surety bond guaranteeing performance,
4 or an irrevocable letter of credit.

5 (1) The cost estimate for the post-closure care of a
6 CCR surface impoundment shall be calculated using a
7 30-year post-closure care period or such longer period as
8 may be approved by the Agency under Board or federal
9 rules.

10 (2) The Agency is authorized to enter into such
11 contracts and agreements as it may deem necessary to carry
12 out the purposes of this Section. Neither the State, nor
13 the Director, nor any State employee shall be liable for
14 any damages or injuries arising out of or resulting from
15 any action taken under this Section.

16 (3) The Agency shall have the authority to approve or
17 disapprove any performance bond or other security posted
18 under this subsection. Any person whose performance bond
19 or other security is disapproved by the Agency may contest
20 the disapproval as a permit denial appeal pursuant to
21 Section 40.

22 (g) The Board shall adopt rules establishing construction
23 permit requirements, operating permit requirements, design
24 standards, reporting, financial assurance, and closure and
25 post-closure care requirements for CCR surface impoundments.
26 Not later than 8 months after July 30, 2019 (the effective date

1 of Public Act 101-171) the Agency shall propose, and not later
2 than one year after receipt of the Agency's proposal the Board
3 shall adopt, rules under this Section. The Board shall not be
4 deemed in noncompliance with the rulemaking deadline due to
5 delays in adopting rules as a result of the Joint Commission on
6 Administrative Rules oversight process. The rules must, at a
7 minimum:

8 (1) be at least as protective and comprehensive as the
9 federal regulations or amendments thereto promulgated by
10 the Administrator of the United States Environmental
11 Protection Agency in Subpart D of 40 CFR 257 governing CCR
12 surface impoundments;

13 (2) specify the minimum contents of CCR surface
14 impoundment construction and operating permit
15 applications, including the closure alternatives analysis
16 required under subsection (d);

17 (3) specify which types of permits include
18 requirements for closure, post-closure, remediation and
19 all other requirements applicable to CCR surface
20 impoundments;

21 (4) specify when permit applications for existing CCR
22 surface impoundments must be submitted, taking into
23 consideration whether the CCR surface impoundment must
24 close under the RCRA;

25 (5) specify standards for review and approval by the
26 Agency of CCR surface impoundment permit applications;

1 (6) specify meaningful public participation procedures
2 for the issuance of CCR surface impoundment construction
3 and operating permits, including, but not limited to,
4 public notice of the submission of permit applications, an
5 opportunity for the submission of public comments, an
6 opportunity for a public hearing prior to permit issuance,
7 and a summary and response of the comments prepared by the
8 Agency;

9 (7) prescribe the type and amount of the performance
10 bonds or other securities required under subsection (f),
11 and the conditions under which the State is entitled to
12 collect moneys from such performance bonds or other
13 securities;

14 (8) specify a procedure to identify areas of
15 environmental justice concern in relation to CCR surface
16 impoundments;

17 (9) specify a method to prioritize CCR surface
18 impoundments required to close under RCRA if not otherwise
19 specified by the United States Environmental Protection
20 Agency, so that the CCR surface impoundments with the
21 highest risk to public health and the environment, and
22 areas of environmental justice concern are given first
23 priority;

24 (10) define when complete removal of CCR is achieved
25 and specify the standards for responsible removal of CCR
26 from CCR surface impoundments, including, but not limited

1 to, dust controls and the protection of adjacent surface
2 water and groundwater; and

3 (11) describe the process and standards for
4 identifying a specific alternative source of groundwater
5 pollution when the owner or operator of the CCR surface
6 impoundment believes that groundwater contamination on the
7 site is not from the CCR surface impoundment.

8 (h) Any owner of a CCR surface impoundment that generates
9 CCR and sells or otherwise provides coal combustion byproducts
10 pursuant to Section 3.135 shall, every 12 months, post on its
11 publicly available website a report specifying the volume or
12 weight of CCR, in cubic yards or tons, that it sold or provided
13 during the past 12 months.

14 (i) The owner of a CCR surface impoundment shall post all
15 closure plans, permit applications, and supporting
16 documentation, as well as any Agency approval of the plans or
17 applications on its publicly available website.

18 (j) The owner or operator of a CCR surface impoundment
19 shall pay the following fees:

20 (1) An initial fee to the Agency within 6 months after
21 July 30, 2019 (the effective date of Public Act 101-171)
22 of:

23 \$50,000 for each closed CCR surface impoundment;

24 and

25 \$75,000 for each CCR surface impoundment that have
26 not completed closure.

1 (2) Annual fees to the Agency, beginning on July 1,
2 2020, of:

3 \$25,000 for each CCR surface impoundment that has
4 not completed closure; and

5 \$15,000 for each CCR surface impoundment that has
6 completed closure, but has not completed post-closure
7 care.

8 (k) All fees collected by the Agency under subsection (j)
9 shall be deposited into the Environmental Protection Permit
10 and Inspection Fund.

11 (1) The Coal Combustion Residual Surface Impoundment
12 Financial Assurance Fund is created as a special fund in the
13 State treasury. Any moneys forfeited to the State of Illinois
14 from any performance bond or other security required under
15 this Section shall be placed in the Coal Combustion Residual
16 Surface Impoundment Financial Assurance Fund and shall, upon
17 approval by the Governor and the Director, be used by the
18 Agency for the purposes for which such performance bond or
19 other security was issued. The Coal Combustion Residual
20 Surface Impoundment Financial Assurance Fund is not subject to
21 the provisions of subsection (c) of Section 5 of the State
22 Finance Act.

23 (m) The provisions of this Section shall apply, without
24 limitation, to all existing CCR surface impoundments and any
25 CCR surface impoundments constructed after July 30, 2019 (the
26 effective date of Public Act 101-171), except to the extent

1 prohibited by the Illinois or United States Constitutions.

2 (n) This subsection applies to owners and operators of CCR
3 surface impoundments at electric generating plants that are
4 bordering Lake Michigan.

5 CCR in all CCR surface impoundments subject to this
6 subsection, including those for which an adjusted standard has
7 been sought pursuant to Section 28.1, shall be closed by
8 removal by off-site disposal, pursuant to this Section,
9 applicable Illinois Pollution Control Board regulations, and
10 the following provisions:

11 (1) CCR surface impoundments under this subsection are
12 not subject to the closure alternative analysis required
13 under subsection (d).

14 (2) Notwithstanding any other requirements of this
15 Section or Board rules or regulations, applications for
16 closure construction subject to this subsection shall be
17 submitted to the Agency within one year after the
18 effective date of this amendatory Act of the 102nd General
19 Assembly. Application requirements and permit issuance
20 procedures shall follow those adopted by the Illinois
21 Pollution Control Board under this Section.

22 (3) If the owner or operator of any CCR surface
23 impoundment subject to this subsection has submitted a
24 construction permit application to the Agency to close a
25 subject CCR surface impoundment by any method other than
26 removal under Part 845 of Title 35 of the Illinois

1 Administrative Code, the owner or operator shall submit an
2 amended construction permit application that complies with
3 the requirements of this Section within one year after the
4 effective date of this amendatory Act of 102nd General
5 Assembly.

6 (4) Any permit issued by the Agency allowing a CCR
7 surface impoundment subject to this subsection to close in
8 place shall be declared void. The Agency shall not issue
9 any operating permit or construction permit allowing
10 closure in place to the owner or operator of any CCR
11 surface impoundment subject to this subsection.

12 (Source: P.A. 101-171, eff. 7-30-19; 102-16, eff. 6-17-21;
13 102-137, eff. 7-23-21; 102-309, eff. 8-6-21; 102-558, eff.
14 8-20-21; 102-662, eff. 9-15-21; revised 10-14-21.)

15 (415 ILCS 5/22.59a new)

16 Sec. 22.59a. Great Lakes CCR protection.

17 (a) The General Assembly finds that:

18 (1) The State has a long-standing policy to restore,
19 protect, and enhance the environment, and has a particular
20 interest in preserving the quality of Lake Michigan, which
21 serves as a drinking water source for millions of State
22 residents and provides irreplaceable recreational,
23 ecological, and economic value to Illinois.

24 (2) CCR generated by the electric generating industry
25 has contaminated, and continues to contaminate, Lake

1 Michigan, and CCR placed in unlined deposits, including
2 deposits outside of CCR surface impoundments as well as in
3 CCR surface impoundments, continues to threaten the
4 quality of Lake Michigan's water.

5 (3) The purpose of this Section is to protect Lake
6 Michigan against further contamination from CCR.

7 (b) This Section applies to owners and operators of CCR
8 surface impoundments at electric generating plants that are
9 bordering Lake Michigan. This section shall not apply to CCR
10 surface impoundments subject to Section 22.59, except for
11 subsection (n) of that Section.

12 (c) An owner or operator shall remove from their site, for
13 off-site disposal, all CCR generated by the facility and
14 remediate all soil and groundwater impacted by the CCR, in
15 accordance with the following:

16 (1) Within one year after the effective date of this
17 amendatory Act of the 102nd General Assembly, the owner or
18 operator shall conduct a site investigation and submit to
19 the Agency a site investigation report that identifies the
20 full extent of CCR at the site. The investigation and
21 report shall also identify the full extent of soil and
22 groundwater that, as a result of the CCR, exceeds the most
23 stringent remediation objectives adopted under Title XVII
24 of this Act.

25 (A) Within 5 days after submitting the report to
26 the Agency, the owner or operator shall post public

1 notice of the report's submission (i) on the owner or
2 operator's website, along with a copy of the report
3 for public viewing, and (ii) in a newspaper of general
4 distribution in the municipality. The notice shall be
5 provided in English and Spanish and shall inform the
6 public of their right to submit comments on the report
7 to the Agency within 30 days after the date the notice
8 is published in the newspaper. The owner or operator
9 shall also maintain a copy of the report in a public
10 repository in the municipality for public viewing,
11 which shall be identified in the public notice.

12 (B) Within 90 days after receipt of the site
13 investigation report, the Agency shall determine
14 whether the investigation and report complies with
15 this paragraph (1). In making its determination, the
16 Agency shall consider all public comments submitted
17 within 30 days after the date of the newspaper notice
18 required under subparagraph (A).

19 (C) If the Agency determines the investigation and
20 report complies with this paragraph (1) it shall
21 notify the owner or operator in writing of its
22 determination. The owner or operator shall then submit
23 a CCR removal and remediation plan in accordance with
24 paragraph (2).

25 (D) If the Agency determines the investigation or
26 report does not comply with this paragraph (1) it

1 shall notify the owner or operator in writing of its
2 determination and the reasons for the determination.
3 The owner or operator shall then have 6 months to (i)
4 perform additional investigation or correct any
5 deficiencies and (ii) submit an amended site
6 investigation report to the Agency, which shall be
7 subject to the same submission and review procedures
8 set forth in this paragraph (1).

9 (2) Within 6 months after the Agency's approval of the
10 site investigation report, the owner or operator shall
11 submit to the Agency a CCR removal and remediation plan
12 that will achieve the removal of all CCR at the site and
13 the remediation of all soil and groundwater that, as a
14 result of the CCR, exceeds the most stringent remediation
15 objectives adopted under Title XVII of this Act. The plan
16 shall include a schedule for completion of its major
17 milestones, along with the following:

18 (A) An analysis of the modes for transporting the
19 removed CCR off-site, including by rail, barge,
20 low-polluting trucks, or a combination of these
21 transportation modes.

22 (B) Removal of CCR consistent with 35 Ill. Adm.
23 Code 845.740 and 845.760.

24 (C) Within 5 days after submitting the plan to the
25 Agency, the owner or operator shall post public notice
26 of the plan's submission (i) on the owner or

1 operator's website, along with a copy of the plan for
2 public viewing, and (ii) in a newspaper of general
3 distribution in the municipality. The notice shall be
4 provided in English and Spanish and shall inform the
5 public of their right to submit comments on the plan to
6 the Agency within 30 days after the date the notice is
7 published in the newspaper. The owner or operator
8 shall also maintain a copy of the report in a public
9 repository in the municipality for public viewing,
10 which shall be identified in the public notice.

11 (D) Within 90 days after receipt of the plan, the
12 Agency shall determine whether the plan complies with
13 this paragraph (2). In making its determination, the
14 Agency shall consider all public comments submitted
15 within 30 days after the date of the newspaper notice
16 required under subparagraph (C).

17 (E) If the Agency determines the plan, with or
18 without Agency modifications, complies with paragraph
19 (2), it shall notify the owner or operator in writing
20 of its determination. The owner or operator shall then
21 proceed with implementation of the plan, including any
22 modifications by the Agency, and submission of a
23 removal and remediation report in accordance with
24 paragraph (3).

25 (F) If the Agency determines the investigation or
26 report does not comply with paragraph (2), it shall

1 notify the owner or operator in writing of its
2 determination and the reasons for the determination.
3 The owner or operator shall then have 60 days to submit
4 an amended plan to the Agency, which shall be subject
5 to the same submission and review procedures set forth
6 in subparagraphs (C) and (D).

7 (3) In accordance with a schedule approved by the
8 Agency, the owner or operator shall implement the
9 remediation plan and provide the Agency with updates on
10 the plan's implementation. Upon completion of the plan,
11 the owner or operator shall submit a completion report to
12 the Agency.

13 (A) Within 5 days after submitting an update or
14 the completion report to the Agency on plan
15 implementation, the owner or operator shall post
16 public notice of the report's submission (i) on the
17 owner or operator's website, along with a copy of the
18 report for public viewing, and (ii) in a newspaper of
19 general distribution in the municipality. The notice
20 shall be provided in English and Spanish and shall
21 inform the public of their right to submit comments on
22 the report to the Agency within 30 days after the date
23 the notice is published in the newspaper. The owner or
24 operator shall also maintain a copy of the report in a
25 public repository in the municipality for public
26 viewing, which shall be identified in the public

1 notice.

2 (B) Within 90 days after receipt of the completion
3 report, the Agency shall determine whether the removal
4 and remediation has resulted in (i) the removal of all
5 CCR at the site and (ii) the remediation of all soil
6 and groundwater that, as a result of the CCR, exceeds
7 the most stringent remediation objectives adopted
8 under Title XVII of this Act. In making its
9 determination, the Agency shall consider all public
10 comments submitted within 30 days after the date of
11 the newspaper notice required under subparagraph (A).

12 (C) If the Agency determines that the required
13 removal and remediation is complete, it shall notify
14 the owner or operator in writing of its determination.

15 (D) If the Agency determines that the required
16 removal and remediation is not complete, it shall
17 notify the owner or operator in writing of its
18 determination and the reasons for the determination.
19 The owner or operator shall then continue removal or
20 remediation, and submit reports to the Agency, in
21 accordance with a schedule established by the Agency.
22 Reports shall be subject to the same submission and
23 review procedures set forth in subparagraphs (A) and
24 (B). If necessary, the owner or operator may amend the
25 plan and submit it for review and approval in
26 accordance with paragraph (2).

1 (d) Except for the State, its agencies and institutions, a
2 unit of local government, or not-for-profit electric
3 cooperative as defined in Section 3.4 of the Electric Supplier
4 Act, an owner or operator shall post with the Agency a
5 performance bond or other security for the purpose of ensuring
6 removal and remediation in accordance with this Section. The
7 only acceptable forms of financial assurance are the forms of
8 financial assurance that are acceptable for CCR surface
9 impoundments under Section 22.59.

10 (e) The Agency may enter into such contracts and
11 agreements as it deems necessary to carry out the purposes of
12 this Section. Neither the State, nor the Director of the
13 Agency, nor any State employee shall be liable for any damages
14 or injuries arising out of or resulting from any action taken
15 under this Section.

16 (f) The Agency may approve or disapprove any performance
17 bond or other security posted under this Section. Any person
18 whose performance bond or other security is disapproved by the
19 Agency may contest the disapproval as a permit denial appeal
20 pursuant to Section 40.

21 Section 97. Severability. The provisions of this Act are
22 severable under Section 1.31 of the Statute on Statutes.

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."